

SEP 08 2008

# KRIEG · DEVAULT LLP

## ATTORNEYS AT LAW

*Solutions, not obstacles®*

**FAX COVER PAGE****Date:** September 8, 2008 **Pages (including this page):** 17**To:** Examiner Suzette J. Gherbi, Group Art Unit 3738 **Fax:** 571-273-8300 **Phone:**  
U.S. Patent and Trademark Office**From:** Brad A. Schepers **Fax:** (317) 636-1507 **Phone:** (317) 238-6334**Subject:** Supplemental Response to Non-Final Office Action for U.S. Patent Application No. 10/699,175**Comments:****Hard Copy Will Be Sent Via:**

- ☐ Regular Mail  
☐ Email  
☐ Overnight Courier  
☐ Via Messenger  
☒ Fax Communication Only

**Sent By:** Cheryl Kalugyer**Client Code:** 334 MSDI-434**WARNING CONFIDENTIALITY NOTICE**

The documents constituting this fax transmittal contain confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the individual(s) or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance upon the content of this fax transmittal is strictly prohibited. If you have received this fax transmittal in error, please immediately notify us by telephone at the number below to arrange for return of the original documents to us. Thank you.

**For Questions or Problems in Transmission, Please Contact our Fax Operators**

☒ KRIEG DEVAULT LLP  
ONE INDIANA SQUARE  
SUITE 2800  
INDIANAPOLIS, IN 46204  
TELEPHONE-(317) 636-4341  
FAX-(317) 636-1507

☐ KRIEG DEVAULT LLP  
12800 N MERIDIAN STREET  
SUITE 300  
CARMEL, IN 46032  
TELEPHONE-(317) 566-1110  
FAX-(317) 636-1507

☐ KRIEG DEVAULT LLP  
949 E. CONNER STREET  
SUITE 200  
NOBLESVILLE, IN 46060  
TELEPHONE-(317) 773-7818  
FAX-(317) 773-7918

☐ KRIEG DEVAULT LLP  
833 W. LINCOLN STREET  
SCHERERVILLE, IN 46375  
TELEPHONE-(219) 227-6100  
FAX-(219) 227-6101

KD\_IM-1732156\_1.DOC

**RECEIVED**  
**CENTRAL FAX CENTER**

**SEP 08 2008**

PTO/SB/21 (09-04)


Approved for use through 07/31/2008. OMB 0851-0031

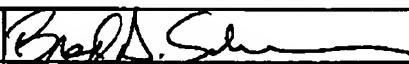
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>TRANSMITTAL FORM</b>  <i>(to be used for all correspondence after initial filing)</i>	Application Number	10/699,175	
	Filing Date	October 31, 2003	
	First Named Inventor	Bianchi et al.	
	Art Unit	3738	
	Examiner Name	Suzette J. Gherbi	
Total Number of Pages In This Submission	15	Attorney Docket Number	MSDI-434/PC318.08

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Receipt Postcard; Claim Support Chart
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm Name	Krieg DeVault LLP	
Signature		
Printed name	Brad A. Schepers	
Date	September 8, 2008	Reg. No. 45,431

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:		
Signature		
Typed or printed name	Brad A. Schepers.	Date September 8, 2008

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

RECEIVED  
CENTRAL FAX CENTER  
SEP 08 2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re patent application of:	)	Before the Examiner:
Bianchi et al.	)	Suzette J. Gherbi
	)	
Application of Serial No. 10/699,175	)	Group Art Unit 3738
	)	
Filed October 31, 2003	)	Ref. No. MSDI-434
	)	
OPEN INTERVERTEBRAL SPACER	)	September 8, 2008

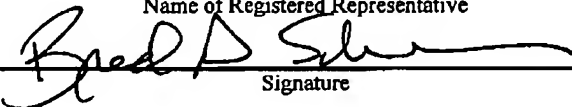
**Via Facsimile Transmission: 571-273-8300**

**SUPPLEMENTAL RESPONSE TO NON-FINAL OFFICE ACTION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The subject response is supplementary to Applicant's previous response filed on August 25, 2008. Please provide any extensions of time necessary and charge any additional fees which may be necessary to Deposit Account No. 12-2424, but not to include any payment of issue fees.

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at 571-273-8300 on:	
September 8, 2008	_____
Date of Transmission	_____
Brad A. Schepers	_____
Name of Registered Representative	_____
	_____
Signature	_____
September 8, 2008	_____
Date of Signature	_____

Supplemental Response  
Application Serial No. 10/699,175  
Page 1 of 12